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 HSBC MORTGAGE CORPORATION (USA) AND  
 HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie  
 Marie Shearn, individually, on behalf of all  
 others similarly situated, and on behalf of  
 the general public,

Plaintiffs,

v.

HSBC Mortgage Corporation (USA);  
 HSBC Bank USA, N.A.; and DOES 1  
 through 50, inclusive,

Defendants.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF JEFFREY P.  
 NEEDHAM IN OPPOSITION TO  
 PLAINTIFFS' MOTION FOR CLASS  
 CERTIFICATION UNDER FED. R. CIV.  
 P. 23**

Date: October 10, 2008  
 Time: 9:00 a.m.  
 Courtroom: 7 (19th Floor)  
 Judge: Hon. Maxine M. Chesney

I, Jeffrey P. Needham, hereby declare and state:

1. I have personal knowledge of the facts set forth below. If called as a witness,  
 I could and would testify to the following.

2. I am employed by HSBC Mortgage Corporation (USA) (hereinafter  
 "HMCU"). My title is "Senior Vice President, Western Division." In my job, I am responsible for  
 overseeing the retail and wholesale business of HMCU in the Western United States, including  
 overseeing individuals employed in the capacity of Senior Retail Mortgage Lending Consultant,  
 Retail Mortgage Lending Consultant, and Premier Mortgage Sales Officer positions. These

DECL. OF J. NEEDHAM/OPP. RULE 23  
 CLASS CERT

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1 positions are also commonly known as "loan officer" positions.

2 3. I have worked with the same mortgage company for fourteen (14) years. In  
3 1997, the company for which I worked was called Marine Midland Mortgage Corporation, which  
4 was owned by an HSBC company. In or about 2000, Marine Midland Mortgage Corporation  
5 rebranded and became known as HSBC Mortgage Corporation (USA).

6 4. Because of my position as "Senior Vice President, Western Division," I have  
7 knowledge of HMCU's requirement regarding collection of application fees from customers.

8 5. HMCU requires loan officers to collect any required mortgage loan  
9 application fees from customers at the time of loan application. The amount of fee required to be  
10 collected by the loan officer varies by the type of loan, e.g., jumbo or conforming, which are  
11 identified by loan program codes.

12 6. If a loan officer fails to collect the required application fee and the loan fails  
13 to fund, HMCU's Mortgage Sales Incentive Plan for Retail Loan Consultants ("Incentive Plan")  
14 specifies that the amount of the application fee that was not collected should be subtracted as part of  
15 the loan officer's incentive compensation calculation.

16 7. In my region, the regional managers make clear that there is an expectation  
17 that loan officers collect the required application fees from customers at the time a loan application  
18 will be processed. Further, my regional managers and I also remind loan officers that failure to  
19 collect an application fee can be factored into a loan officer's incentive compensation under the  
20 Incentive Plan.

21 8. While we have told loan officers that they are required to collect this  
22 application fee and that failure to do so will be factored into their incentive compensation under the  
23 Incentive Plan, I or my regional managers have, under some circumstances, made exceptions to this  
24 requirement and have decided not to charge the loan officer's incentive compensation with the  
25 uncollected application fee amount. In those circumstances, the amount of the application fee will  
26 be charged to my "cost center," which means that HMCU absorbs the amount of the uncollected  
27 application fee as a charge to the business.

9. Such exceptions are decided on a case-by-case basis with input from the loan officer, as they arise. There is no national policy about when the waived application fee will be charged to the cost center as opposed to the individual loan officer's compensation. It is wholly dependent on what individual managers, like myself, decide. In my experience, a loan officer may request an exception be granted in cases when a customer feels that HMCU or the particular loan officer did not meet or exceed the customer's expectations on a transaction.

10. Further, an exception may be granted if other intervening circumstance prevent the loan officer from closing the deal or prevent the loan application from funding. As an example of such exception, I am aware of an instance where Plaintiff Philip Wong failed to collect a customer's application fee and, rather than charge that uncollected fee to Mr. Wong's incentive compensation, HMCU absorbed the amount of the uncollected application fee. Specifically, Mr. Wong had taken an application for a loan from an existing HMCU customer, who simultaneously received a retention or modification solicitation from HMCU. The customer withdrew his application with Mr. Wong and decided instead to pursue the retention or modification offer. Given the circumstances, I, along with regional manager Amy Ku, requested that the HMCU Accounting Department charge the uncollected fee to our cost center, rather than factor the uncollected application fee into Mr. Wong's incentive compensation. A true and correct copy of an e-mail message, dated May 2, 2007, providing the approval to do this is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge.

Executed this 18<sup>th</sup> day of September, 2008, in Concord, California.

  
JEFFREY P. NEEDHAM